STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 8927
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for ANFC-UP (unemployed parent) benefits. The issue is whether the petitioner became unemployed "by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under Vermont's unemployment compensation law" (see infra). This case concerns the same petitioner and set of circumstances as in Fair Hearing No. 8883 (involving the petitioner's eligibility for EA/GA).

FINDINGS OF FACT

The hearings in this matter were held on December 21, 1988, and January 18, 1989. On the former date (unlike in Fair Hearing No. 8883, heard on November 16, 1988, at which time the employer was unavailable) the petitioner's employer appeared and gave testimony. While his testimony was essentially the same as that "offered" by the department in Fair Hearing No. 8883, the hearing officer deemed him to be a highly biased and incredible witness. Otherwise, the facts and circumstances surrounding this case are as set forth in Fair Hearing No. 8883. Except where specifically noted below,

the findings in Fair Hearing No. 8883 are adopted and incorporated by reference herein.

After hearing and observing the employer, it is found that as of October 28, 1988, the day he was told his credit was being cut off, the petitioner was entirely reasonable in concluding that he had been fired from his job. It is now clear that the event that changed the previously-good relationship the petitioner had with his employer was an accident in which the employer's newly-purchased mowing machine rolled over and was damaged while the petitioner was operating it. Although the employer did not witness the accident, he assumed it was due to the petitioner's negligence--an assumption not at all supported by any evidence the employer or the department could offer. The employer was further angered by what-he-considered-to-be the petitioner's insufficient degree of remorse over the accident. From that time on, the employer's attitude toward the petitioner was markedly altered. Even by the time of the hearing, the employer could not discuss the mower accident without displaying palpable anger toward the petitioner.

Based on the evidence presented, and upon the demeanor of the witnesses, it is found that the conversation between the petitioner and his employer on October 31, 1988, amounted to a discharge of the petitioner by his employer--not a quit. Regardless of who said what, and in what order,

it is uncontroverted that before the confrontation between the petitioner and his employer ended (if not before it began), the employer knew that the petitioner thought he had been fired. Moreover, as noted above and in Fair Hearing No. 8883, the petitioner had a reasonable basis for this belief. Despite this, the employer said nothing to the petitioner that would, or should, have led a reasonable person to conclude that his employment status had not been terminated.

There is simply no credible basis in the evidence to conclude that as of October 31, 1988, the petitioner could have remained on the job even if he had wanted to. The employer had ample opportunity to correct any "misconception" the petitioner may have had regarding his job status. He chose not to do so.[1] It is found that the petitioner's employment was terminated when the employer told him to "clear out" of the house that the employer had provided to the petitioner as a condition of the petitioner's employment.[2] It must, therefore, be concluded that the petitioner was discharged from his last job--not that he voluntarily quit. Although the employer was dissatisfied with the petitioner's recent job performance, there is no credible evidence that the petitioner ever engaged in conduct that was intentionally or with culpable negligence in disregard of the employer's business interest.

ORDER

The department's decision is reversed.[3]

REASONS

The definition of "unemployed parent" contained in W.A.M. ə 2333.1 includes the following provision:

> 4. Within the 30-day period prior to receipt of assistance, (the applicant) has not become unemployed by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under Vermont's unemployment compensation law . . .[4]

Vermont's unemployment compensation statutes provide for disqualification from unemployment compensation benefits when an individual "has been discharged by his last employing unit[5] for misconduct connected with his work", 21 V.S.A. ə 1344(a)(1)(A). There can not be many sections of the Vermont statutes as extensively annotated as the above provision. The law is clear that the burden of proving misconduct is "squarely on the employer". Cross v. Department of Employment & Training, 147 Vt 634 (1987). This burden is met only when it is demonstrated that the employer's conduct constituted a "substantial disregard of the employer's interest, either willful or culpably negligent." In Re Gray, 127 VT 303 (1968). Moreover, it has been specifically held that mere "negligent" conduct, including accidents that result in damage to the employer's property, are not sufficient to bar eligibility for unemployment compensation benefits. Schaffner v. Department of Employment Security, 140 VT 89 (1981).

As noted above, the evidence in this matter establishes that the petitioner was discharged by his employer on October 31, 1988. It does not establish that the petitioner was guilty of "misconduct" within the meaning of the above statute and caselaw.[6] Therefore, the department's decision is reversed.

FOOTNOTES

[1]The employer's testimony and demeanor would lead the hearing officer to conclude that he had decided to fire the petitioner several days before October 31, 1988--as he had led the storeowner to conclude. He had not communicated this to the petitioner, himself, only because he did not yet have a replacement for the petitioner and would have been strapped for help.

[2]As noted in Fair Hearing No. 8883, the petitioner and his family were rendered homeless and penniless when they had to leave the house on the farm. This fact weighs heavily in favor of finding that the petitioner did not unilaterally and voluntarily sever his employment. Both the petitioner and his wife appeared to be sincere and credible individuals.

[3]The board assumes that the petitioner meets all the other criteria of ANFC-UP eligibility (e.g., work quarters), which were not completely resolved as of the dates of the hearing. If the petitioner is not otherwise eligible for ANFC, the case appears moot.

[4]The disqualification under this section would run only for the 30 days following the date of termination of employment. If the petitioner was otherwise eligible for ANFC (see footnote 3, supra) this case would concern only the "closed period" of 30 days following October 31, 1988. By the time of the second hearing, however, the petitioner had returned to work, which would appear to end any period of ANFC eligibility for the family.

[5]It does not appear that farms and agricultural workers are covered under Vermont's unemployment compensation statutes. See 21 V.S.A. э 1301.

[6]The statutes also disqualify an individual who "has left the employ of his last employing unit voluntarily without good cause attributable to such employing unit". 21 V.S.A. ə 1344(a)(2)(A). However, in view of the finding (s upra) that the petitioner was discharged from, rather than quit, his last job, this section is irrelevant. Moreover, given the finding that the employer had decided to fire the petitioner, if not that day then in the near future, it could reasonably be concluded that even if the petitioner had quit, it would have been for good cause attributable to the employer.

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